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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/598,631	06/21/2000	Robert Daniel Maher III	NR-2	6324

7590 05/31/2005

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EXAMINER	
LEMMA, SAMSON B	

ART UNIT	PAPER NUMBER
2132	

DATE MAILED: 05/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/598,631	Applicant(s) MAHER ET AL.	
	Examiner Samson B. Lemma	Art Unit 2132	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 May 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☒ The period for reply expires ~~3~~ months from the mailing date of the final rejection.

   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, ~~the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended~~.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1-16*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. ☐ Other: _____.

Gilberto

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8-10-0

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argued that a prima facie case of obviusness has not been established in the former final office action and stated that to establish a prima facie case of obviousness, three basic criteria must be met . First there must be some suggestion or motivation, either in the references themselves or in the knowledge generally availabe to one of ordinary skill in the art, to modify the reference or to combine reference teachings, there must be reasonable expectation of success. Finally, the Prior art reference (or refereces when combined) must teach or suggest all the claim limitation. Examiner disagress with the above argument and point out that it is not necessary that the references actually suggest expressly or in some words, the changes or improvements that applicant has made. The test for combining references is what the references as a whole would have suggested to one of ordinary skill in the art. In re Sheckler, 168 USPQ 716 (CCPA 1971). In re McLaughlin 170 USPQ 209 (CCPA 1971); In re Young 159 USPQ 725 (CCPA 1968) and such a motivation has been established by the former office action.

The second argument by the applicant was about claim interpretations and applicant commented that the claims must be given their broadest reasonable interpretation and applicant added that when terms not defined by the applicant in the specification, the words of the claim must be given their plain meaning. In other words, they must be read as they would be interpreted by those of ordinary skill in the art and finally said in this particular case, Kloth and Lorrain do not teach or suggest all the limitations of independent claim 1 and are thus insufficient to obviate the subject matter. The Examiner asserts that not only that the claims had been given their broadest reasonable interpretation but also the words of the claims have been given interpretation as would be interpreted by those of ordinary skill in the art. However specfication is not the measure of invention. Likewise limitations contained therein can not be read into the claims for the purpose of avoiding the prior art. In re Sporck, 55 CCPA 743,386 F. 2d 924, 155 USPQ 687 (1968)

The third argument by the applicant is traversing the Examiners reading of "real time traffic" in Lorrain with the concept of "validated traffic" and "Non-real time traffic" in Lorrain with the concept of "non-validated traffic" as used by the applicants. Applicants argued that validated traffic is independent of the type of traffic, i.e. validated traffic can be real time or non-real time traffic. In response to this second argument, Examiner provide the following similar reason/argument that has been provided in the former final office action. For the sake of argument, let us assume that a validated traffic can be real time or non-real time just as the applicant suggested. The major elements of the applicants claim is setting/placing the data packet in a higher priority of service if the data packet is associated with a validated traffic flow; and to a low priority quality of service if it is not associated with a validated traffic.[See for instance applicants 1st claim].This implies that the applicant will set both the real time traffic and non-real time traffic higher priority. Indeed, one of ordinary skill would not have been motivated to set the same high priority to both real-time traffic and non-real time traffic, since this does not only increase congestion but it is contrary to the practice of optimizing and utilization of the bandwidth/resources. [See Lorrain column 2, lines 20-38] and this is contrary to the method of preventing denial of service attacks, since denial of service attacks is characterized by consuming resources.

Applicant forth argument was related to the indpendent claims 7 and 12 and applicant argued that the independent claims recite similar features as claim 1 and were rejected for the same rationale as claim 1. Therefore the same distinctions between Kloth and Lorrain and the claimed invention in claim 1 apply for claims 7 and 12. For the reasons described above, Kloth and Lorrain do not render the claims prima facie obvious. Hence, Kloth and Lorrain fail to obviate the present invention as recited in claims 7 and 12. In response to this argument the examiner asserts that reasons that have been described for claim 1 is also applicable to claims 7 and 12 since the recited limitation in the independent claims 7 and 12 is similar to the rejected claim 1.

Finally the applicant argued the dependent claims are allowable at least by virtue of their dependence on an allowable base claims. Examiner asserts that the examiner argument explained for the independent claims is also applicable to the dependent claims by virtue of their dependence.
Therefore all the elements of the limitations is explicitly or implicitly or inherently suggested and disclosed by the combinations of the references on the records and the final rejection remains valid unless and otherwise the applicant rewrites/amends the limitation to overcome the rejection.